injunction where the complainant's damage is relatively small, even though it be substantial. *Doughty* v. *Warren*, 85 N. C. 136.

The equitable rule has long been recognized that an injunction will be granted to prevent irreparable injury or a multiplicity of actions. "Irreparable injury" is a term not clearly defined, but it seems that one who is continuously disturbed in the enjoyment of his property may be considered irreparably injured. The inconvenience of a multiplicity of actions could only be prevented by injunction, as nuisances of this character are seldom of so permanent a nature as to justify the granting of future damages by a court of law. It is sometimes stated that the granting of any injunction lies within the discretion of the court, yet such discretion, by the better view, ought to be employed only in considering whether a case is clearly within an equitable rule, and not in deciding whether a definite equitable rule ought to be applied to facts clearly within its scope.

In at least three classes of cases, however, the result of granting injunctive relief may seem undesirable. In the first class are nuisances caused by businesses, which, like that in the principal case, are vitally important to the public, and must be located in cities where they necessarily disturb adjacent owners. In the second are nuisances caused by the damming or pollution of rivers by mill-owners. In the third, nuisances caused to houses built around factories subsequent to their erection, which possibly could not have been foreseen. But if an exception in such cases were recognized to the general equitable doctrine, no practical rule could be framed to determine the cases within its scope. On the one hand disturbances caused by nuisances cannot be adequately measured in damages; and on the other hand each court would have its own view as to what constitutes a loss to the public. Again, the evils of allowing injunctions may be readily avoided in the first two classes of cases by legislative enactments permitting the nuisance on payment of compensation. In the third class legislation, though possible, is not so feasible. Yet as the factory owners had an opportunity to protect themselves against any possible trouble by building only where they could buy up the adjoining land before building, if they have failed in this, it is perhaps not a great injustice that they should suffer, even though the public to some extent must suffer with them. In view, then, of the definite equitable rules above stated, and the practical difficulties in overriding them, it seems best for the courts to allow an injunction whenever a legal right appears, and leave any changes necessary to legislation.

OUSTER FROM PARTICULAR FRANCHISES BY QUO WARRANTO PROCEEDINGS. — There has been some doubt whether, in *quo warranto* proceedings, a defendant can be ousted from particular franchises alleged to be incidental to, or a part of, a valid franchise or office. Some courts have held that if the defendant can show a valid title to one office or franchise, *quo warranto* is not the proper remedy to test his right to do certain acts alleged to be a part of the functions of that office or franchise. *People* v. *Whitcomb*, 55 Ill. 172. But the true rule seems to be that where the acts in question amount to a franchise distinct from the one lawfully exercised, the authority to perform those acts must be shown by the defendant when called upon by the sovereign. *People* v. *Ins. Co.*, 15 Johns.

358. Authority to enjoy a certain franchise cannot be a defence for doing acts not appertaining to that franchise, and, if those acts amount to a distinct franchise, the defendant cannot show authority to exercise the franchise he is called upon to defend. From the nature of the remedy, the sovereign is entitled to call upon the defendant to show *quo warranto* he exercises any franchise, and, if several are claimed, one or all may be attacked; the defendant being obliged to show authority to exercise any and all questioned. *People* v. *City of Oakland*, 92 Cal. 611 (Sup. Ct.); *State* v. *City of Topeka*, 30 Kan. 653; *People* v. *City of Peoria*, 166 Ill. 517. Obviously, the same rule must apply where the authority to perform the acts in question is unconstitutional. *People* v. *Saratoga, etc. R. R. Co.*, 15 Wend. 113. Moreover, the rule is well established that the existence of other remedies, whereby a person's right to a public office or franchise may be tested, does not supersede proceeding in *quo warranto* for the same purpose. 2 Spel. Ext. Rel. § 1776.

The question is involved in two recent cases, but in each is unfortunately overlooked by the court. *City of Newport* v. *Horton et al.*, 47 Atl. Rep. 312 (R. I.); *State* v. *Flemming*, 59 S. W. Rep. 118 (Mo.). In the first a statute had created a board of police commissioners for a certain city, with powers, *inter alia*, to appoint a chief, to control the police of the city, to occupy city buildings, and to be paid by the city. *Quo warranto* proceedings were brought against the commissioners and their appointee. Upon the principle of the above cases, the defendants were called upon to show by what authority they claimed their offices, and by what authority they claimed to exercise the three franchises included in the powers given, — namely, the power to take city property, apparently without compensation; the appropriation of city funds; and the right to supersede the local police. But the court held that the statute in question was constitutional, in so far as it related to the title to office of the chief appointed by the board, and that the constitutionality of other parts of the statute was not in issue. Obviously, however, the defendants were claiming franchises distinct from the one held to be valid, and authority to exercise those franchises was conferred upon the defendants only if the statute was constitutional in giving those particular franchises. The right to exercise the franchises was as much in issue as the right to hold the offices, and the defendants should have been ousted from those offices or those franchises for the exercise of which they could show no lawful authority. In the other case mentioned (*State* v. *Flemming*, *supra*), the court held that in *quo warranto* proceedings against duly elected officers of a city, the right of those officers to act in certain territory alleged not to be a part of the city could not be questioned. But the defendants could show authority to exercise franchises in a certain city only, and authority so to act was not authority to exercise the same or other franchises in another city. The extent of the city in which the defendants were duly elected officers was, therefore, in issue, and proof that the city extended over the territory in question was necessary to establish the defendants' right to exercise franchises and hold offices in that territory. Hence in both cases the defendants did not affirmatively establish their right to exercise the franchises claimed by them, and yet the court failed to oust them from those franchises.